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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NIC BEZUSZKA, a/k/a NIC MARYLIW; GILBERT
KUNCL, individually and as legal guardian of JESSICA
KUNCL; JESSICA KUNCL; TROI SULIMAN, individually
and as legal guardian of ASHLEY SULIMAN; ASHLEY
SULIMAN; LINDA WILLIAMS, individually and as legal
guardian of CAITLIN WILLIAMS; CAITLIN WILLIAMS;
MICHELE MILLER; JOHN DOES 1-5; and
JANE DOES 1-5,

Plaintiffs,

-against-

L.A. MODELS, INC.; NYC MANAGEMENT GROUP,
INC., d/b/a NEW YORK MODEL MANAGEMENT;
HEINZ HOLBA, individually and in his official capacity;
SCHWARZKOPF & DEP, INC.,

Defendants.
-----X

Case No.: 04 cv 07703 (NRB)

**AFFIRMATION IN
OPPOSITION TO
MOTION TO DISMISS**

Anthony A. LoPresti, an attorney admitted to practice before this Court, does hereby
affirm under penalty of perjury:

1. I am a member of the firm Meltzer LoPresti, LLP, counsel for the plaintiffs
herein, and I respectfully submit this Affirmation in opposition to Defendant Henkel
Corporation's Motion to Dismiss Plaintiffs' Amended Complaint.
2. Plaintiffs Nic Bezuszk, Jessica Kuncl and Gilbert Kuncl brought this action by
summons and complaint, dated September 29, 2004. Thereafter, pursuant to Rule 15(a),
plaintiffs amended their complaint and five additional parties were joined. See Plaintiffs' First
Amended Complaint, dated November 17, 2004. For purposes of this motion, only two of the

plaintiffs are at issue, those joined in the First Amended Complaint, plaintiffs Caitlin Williams ("Williams"), a minor, and her parent Linda Williams ("L. Williams"), both residents of Pennsylvania (collectively the "Williams Plaintiffs"). Defendants do not contest jurisdiction as to the original and remaining plaintiffs, as complete diversity is indisputable.

3. By Notice of Motion dated January 12, 2005, the Henkel Corporation (as Successor-in-Interest to defendant Schwarzkopf & Dep, Inc.), moved this Court pursuant to FRCP 12(b)(1), to dismiss Plaintiffs' First Amended Complaint for lack of subject matter jurisdiction, specifically asserting that the Williams Plaintiffs are non-diverse parties. At this time, in light of defendant's papers submitted in support of its motion and in the interests of judicial economy, the Williams Plaintiffs have agreed to voluntarily dismiss their claims, without prejudice, pursuant to FRCP Rule 41(a)(1)(i), and file concurrently with this opposition a Notice of Dismissal. See Exhibit "1". The Williams Plaintiffs intend to resume their action as against defendants in state court.

4. Pursuant to FRCP Rule 41(a)(1)(i), service of a Rule 12 motion does not, in itself, preclude voluntary dismissal by notice, and does not ordinarily suffice to defeat a plaintiff's right to dismiss. See Dow Jones & Co., 1998 U.S. App. LEXIS 77 (2d Cir. 1998); Yosef v. Passamaquoddy Tribe, 876 F.2d 283, 286 (2d Cir. 1989), cert. denied, 494 U.S. 1028, 108 L. Ed. 2d 611, 110 S. Ct. 1474 (1990); Seippel v. Jenkins & Gilchrist, P.C., 2004 U.S. Dist. LEXIS 24566 (S.D.N.Y. Dec. 3, 2004). Defendants have not brought a 12(b)(6) motion for failure to state a claim, and defendant's 12(b)(1) motion cannot "ripen" into one for summary judgment. As such, plaintiffs' right to voluntarily dismiss has not been extinguished.

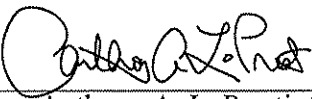
5. Based upon the above, plaintiffs' respectfully request that defendant's motion be deemed moot and that this matter proceed forward expeditiously. The remaining plaintiffs further request that they be permitted thirty (30) days to amend their complaint accordingly.

WHEREFORE, Defendant's motion should be denied in its entirety.

Dated: New York, New York
March 8, 2005

Respectfully Submitted,

MELTZER LoPRESTI, LLP

By: 
Anthony A. LoPresti (AL-7706)

Attorneys for Plaintiffs
545 Fifth Avenue, Suite 1205
New York, New York 10017
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Exhibit "1"

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Defendants.
-----X

NOTICE OF DISMISSAL WITHOUT PREJUDICE

Please take notice that plaintiffs LINDA WILLIAMS and CAITLIN WILLIAMS, hereby
voluntarily dismiss their claims in this action, without prejudice, pursuant to Rule 41(a)(1)(i) of
the Federal Rules of Civil Procedure, without costs to either side.

Dated: New York, New York
March 8, 2005

MELTZER LoPRESTI, LLP

By: /Anthony A. LoPresti/
Anthony A. LoPresti (AL-7706)

Attorneys for Plaintiffs
545 Fifth Avenue, Suite 1205
New York, New York 10017
tel.: (212) 867-1100

DECLARATION OF SERVICE BY MAIL

I, Anthony A. LoPresti, declare, pursuant to 28 U.S.C. Sec. 1746, under penalty of perjury, that on March 8, 2005, I caused to be served the annexed Affirmation in Opposition to Defendant's Motion, upon the following counsel of record by depositing a copy of same, enclosed in a first class postpaid properly addressed wrapper, in a post office/official depository under the exclusive care and custody of the United States Postal Service, within the State of New York, directed to said attorneys at the addresses set forth below, being the addresses designated by said attorneys for that purpose:

Michael F. Brown, Esq.
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Law Offices of Howard K. Alperin
11355 W. Olympic Blvd., Suite 200
Los Angeles, CA 90064

Dated: New York, New York
March 8, 2005



ANTHONY A. LoPRESTI